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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,431	07/27/2005	Rob Short	P-7715	7450
32752	7590	08/19/2010		
David W. Highet, VP & Chief IP Counsel Becton, Dickinson and Company (Hoffman & Baron) 1 Becton Drive, MC 110 Franklin Lakes, NJ 07417-1880			EXAMINER PADGETT, MARIANNE L	
			ART UNIT	PAPER NUMBER
			1715	
			MAIL DATE	DELIVERY MODE
			08/19/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/509,431	<b>Applicant(s)</b> SHORT ET AL.
<b>Examiner</b> MARIANNE L. PADGETT	<b>Art Unit</b> 1715

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 09 August 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 41-76.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) 7/23/2010  
13. ☒ Other: See Continuation Sheet

/Marianne L. Padgett/  
Primary Examiner, Art Unit 1715

## Continuation of 3. NOTE:

The proposed amendment changes the scope of the claims, as moving the source of the plasma with respect to the substrate (or vice versa), in order to create a nonuniform deposit is a different scope than relative motion between a source of reagent (e.g. input into the plasma), with respect the substrate, which was what was previously claimed, hence this clarification of applicants' process may require rearrangement of the rejection &/or further search & consideration of prior art, as the process is still incredibly broad, such this change in scope is not considered to put the application into condition for allowance.

## Continuation of 5. Applicant's reply has overcome the following rejection(s):

Some 112, first & second issues would be removed by the proposed amendment.

## Continuation of 11. does NOT place the application in condition for allowance because:

the proposed amendment would significantly clarify the intended process of applicants' claims, providing language explicitly stating what applicants' intend, rather than requiring the reader disregard what is literally claimed & to guess what process was probably intended based on their own knowledge of common or typical practices in the plasma art, as opposed to seemingly purposeless explicitly claimed limitations in the claims previously submitted (e.g. 3/2/10, etc.), thus removing significant 112, second issues. However, while this proposed language also removes some related 112, first issues, there remain issues with respect to the scope of the claimed mask. The examiner notes applicants' citation of the paragraph bridging pages 15-16, where they quote "but without touching" which is further describing the location of the mask plate, i.e. in the context of the "sample is raised so as to be extremely close to the Mask Plate", which citation explicitly makes the examiner's point, that it is not merely sufficient for the mask placed be spaced apart, but this limitation is within a particular context. Thus, having claim language which includes for instance collimators on a remote plasma source, which are "spaced apart" as required by the claim language, but may be at a significant distance that is excluded by applicants' original disclosure, quite clearly encompasses new matter. It's not sufficient to extract bits and pieces of an original disclosure, which are disclosed in a particular context, then claimed them without the context, which is what applicants have done.

Applicants' discussion of Dai et al., in view of Kanbe et al. &/or Nakayama et al., where the primary reference incorporates plasma polymerization techniques of Gengenbach et al, is not convincing, because it fails to actually discuss the examiner's combination of facts and techniques from secondary references, with the primary reference teachings, but instead goes off on tangents, without providing any reasonable or convincing arguments why one of ordinary skill & competence in the plasma art would fail to recognize the applicability of alternative masking techniques of the secondary references, with the teachings of the primary references. It is not necessary for secondary references to virtually be 102 references, in order for teachings therein to be relevant. Furthermore, as the claims did not previously require the plasma source to be relatively moved with respect to the substrate, while options of moving substrate or mask relatively in order to create patterns was present in the secondary reference of Nakayama et al., this aspect of the proposed claimed process was not required to be previously discussed, hence detailed discussion of why such would be an obvious variation in view of this combination of references, is a new issue, requiring further consideration/discussion of obviousness.

## Continuation of 13. Other:

With respect to the 7/23/2010 IDS, it is noted that Hu et al. (WO & JP), while directed to a plasma polymerization processes, where the substrate is moved relative to the plasma zone (i.e. a plasma source), as illustrated in figure 1 & as presented in the proposed claims, but these references do not appear to be directed to nonuniform deposit of the plasma polymer, nor to use any masking structure with an aperture, which would produce such nonuniform deposits; and Shinohara's abstract & figures indicate plasma spraying polymerized gas (e.g. plasma polymerization spray deposition) onto a moving substrate, however figure 1 appears to indicate uniform deposition & the schematic diagram does not necessarily provide any information on nozzle structure, thus the presence or lack thereof of a "masking plate" with an aperture at nozzle exit cannot be determined.